

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Mark McCoy, #210705,)	
)	
Petitioner,)	C.A. No. 4:16-638-HMH-TER
)	
vs.)	OPINION & ORDER
)	
Warden Cartledge,)	
)	
Respondent.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.¹ Mark McCoy (“McCoy”) is a pro se state prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In his Report and Recommendation, Magistrate Judge Rogers recommends dismissing McCoy’s petition for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

McCoy filed a motion for enlargement of time, arguing that he did not receive Magistrate Judge Rogers’ June 9, 2016 order granting his motion for extension of time until July 11, 2016, which was after the extended deadline of July 8, 2016. McCoy has provided a copy of the mail delivery log, which supports his argument. Based on the foregoing, the court declines to adopt the Report and Recommendation. McCoy is ordered to respond to the Respondent’s motion for

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1) (2006).

summary judgment within 20 days of this order. Further, this matter is remanded to the magistrate judge for further consideration.

It is therefore

ORDERED that McCoy's motion for enlargement of time, docket number 24, is granted and McCoy is ordered to respond to the pending motion for summary judgment within 20 days of this order. It is further

ORDERED that the court declines to adopt the Report and Recommendation and remands this matter to the magistrate judge for further consideration.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
July 28, 2016

NOTICE OF RIGHT TO APPEAL

The Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.